

**REMARKS**

Upon entry of the above amendments, claims 12 and 13 will be pending. Applicants propose cancellation of the withdrawn species claims and amendment of claims 12 and 13. Entry of the above amendments after final rejection is earnestly solicited.

The Office Action requires cancellation of non-elected claims 1-3 and 14-17. These claims are directed to a non-species. In order to comply with the requirement of the Examiner, applicants propose cancellation of claims 1-3 and 14-17.

Claims 12 and 13 were rejected under 35 USC §103(a) as being unpatentable over Wang et al. Favorable reconsideration of this rejection is earnestly solicited.

The Examiner has maintained the rejection due to a broad interpretation of the present claim language and the epitaxial layers 71, 72 and 73 of Wang et al. The Examiner considers the epitaxial layer 71 of Wang et al. as corresponding to the claimed second nitride layer, and the epitaxial layers 72, 73 as corresponding to the claimed third nitride based semiconductor layer. Furthermore, the Examiner comments that the top portion of the second “layer” of Wang et al. could be considered as a third layer.

Claim 12 requires a second nitride based semiconductor layer formed on said insulating films. The insulating films are required to be formed on the bottom surfaces of the recesses and the top surfaces of projections of said irregular pattern of said first nitride based semiconductor layer. As such, the epitaxial layers 71, 72 and 73 of Wang et al. must necessarily correspond to the second nitride based semiconductor layer. Accordingly, Wang et al. could not be considered to provide a third nitride based semiconductor layer formed on said second nitride based semiconductor layer.

Amendment After Final Rejection

Serial No. 09/955,600

Attorney Docket No. 990852A

In order to further distinguish the invention from Wang et al., claims 12 and 13 have been amended. Wang et al. fails to teach or suggest the claimed invention.

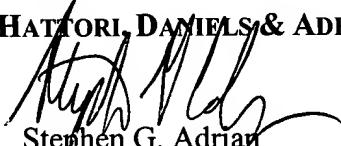
For at least the foregoing reasons, the claimed invention distinguishes over the cited art and defines patentable subject matter. Favorable reconsideration is earnestly solicited.

Should the Examiner deem that any further action by applicants would be desirable to place the application in condition for allowance, the Examiner is encouraged to telephone applicants' undersigned attorney.

If this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,

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Attachments: Petition for Extension of Time  
Notice of Appeal